IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18965 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABA BALAKNATH STEEL IND. - Petitioner(s)

Versus

GUJARAT STATE FINANCIAL CORP. THRO' DY. GENERAL MANAGER - Respondent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner(s) : 1,
MR MITUL K SHELAT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/12/2005

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the notice dated 29.8.2005 issued by the respondent- Gujarat State Financial Corporation issued under Section 29 of the State Financial Corporation Act

and also the notice/letter dated 20.11.2001 (Annexure-H) by which the loan amount is recalled. Another prayer is directing the respondent-GSFC to give re-schedulement of the loan amount already disbursed i.e. Rs. 32.57 Lac and restraining the respondent from charging cumulative interest, penalty and other charges, and to direct the respondent to give No Objection Certificate with regard to the properties of the petitioner already mortgaged with the respondent to enable the petitioner to avail of loan from other financial institutions.

2. Pursuant to the application submitted by the petitioner, the respondent-GSFC agreed to provide a term loan of Rs.54 Lacs to be utilized for the project of MS Angles, Flats, Rotrds and Square CTD Bars, etc. and it appears that out of Rs.54 Lacs, an amount of Rs.32.57 Lacs came to be disbursed, however, subsequently, the balance loan of Rs.21.43 Lacs came to be cancelled vide communication/decision dated 9.10.2001. That thereafter even the order came to be passed dated 20.11.2001 recalling of the amount of Rs.32.57 Lacs already disbursed for breach of terms & conditions of the sanction as well as legal documents

and agreements. It appears that thereafter, the petitioner replied to the communication dated 20.11.2001 however, the said amount of Rs.32.57 Lacs was not paid and the proceedings under Section 29 of the Act came to be initiated. In the meantime, the petitioner approached the GSFC for reschedulement and also for issuance of the No Objection Certificate with regard to the properties of the petitioner already mortgaged with the respondent to enable the petitioner to avail of loan from other financial institutions and pending decision on such representation, the impugned notice dated 29.8.2005 came to be issued by the corporation under Section 29 of the Act for recovery of Rs.56,87,848/- due and payable by the petitioner as on 1.8.2005. Being aggrieved and dissatisfied with the same and the order dated 20.11.2001 recalling of the loan, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

3. Shri Mehul S. Shah, learned advocate appearing on behalf of the petitioner has vehemently submitted that because of non-disbursement of the entire amount sanctioned by the GSFC and non-payment of charges to be

paid to the GEB, the petitioner-company could not start the factory and the production which has led to the present situation. He has submitted that if the entire amount had been disbursed in favour of the petitioner than such a situation would not have been arisen. He has submitted that the petitioner has replied to all the charges levelled in the decision/show-cause notice dated 20.11.2001 recalling the loan amount and even the petitioner has also requested for reschedulement. He has further submitted that if the reschedulement is granted by the respondent and the cumulative interest, penalty and other charges are waived and the No Objection Certificate with regard to the properties of the petitioner already mortgaged with the respondent is issued so as to enable the petitioner to avail of the loan from other financial institutions, the petitioner is ready and willing to pay the entire amount except the amount of cumulative interest, penalty and other charges. It is submitted that pending the decision on the representation, the notice under Section 29 of the Act has been issued which is likely to affect the petitioner and the petitioner will be ruined and therefore, it is requested to allow the present Special Civil Application and to grant the reliefs as prayed

for.

4.Shri Mitul K. Shelat, learned advocate appearing on behalf of the respondent while opposing the present Special Civil Application has submitted that as on 1.8.2005 the amount of Rs.56,87,848/- is due and payable by the petitioner to the respondent-corporation and therefore, the respondent-corporation is justified in initiating the proceedings under Section 29 of the Act. He has also further submitted that the order of 2001 i.e. dated 20.11.2001 has been challenged by the petitioner after a period of 4 years and therefore, the present Special Civil Application is required to be dismissed on the ground of delay and laches. He has also further submitted that so far as the grievance made by the petitioner with regard to non-disbursement of balance amount of Rs.21.43 Lacs is concerned, the petitioner has already accepted the same and even as per the communication dated 9.10.2001 by which the undrawn amount of loan of Rs.21.43 Lacs came to be cancelled has not been challenged even till date and therefore, the only grievance of the petitioner which is required to be considered is with regard to reschedulement. So far as the prayer on behalf of the

petitioner with regard to waiver of the cumulative interest, penalty and other charges are concerned, it is submitted that the respondent-corporation is recovering the same as per the contract entered into between the petitioner and the respondent and therefore, the same cannot be waived as in fact, the petitioner agreed to pay the same. So far as the issuance of No Objection Certificate with regard to the properties of the petitioner already mortgaged with the respondent is concerned, he has submitted that in view of the fact that the huge amount is due and payable by the petitioner and in fact, the petitioner has not come out with any financial institutions, the same cannot be granted. He has relied upon the affidavit-in-reply filed on behalf of the respondent. He has also further submitted that the decision on behalf of the respondents to withdraw the loan of Rs.32.37 Lacs is just and proper and for valid and justifiable reasons. He has relied upon the judgments of the Hon'ble Supreme Court in case of ***HARYANA FINANCIAL CORPORATION AND ANOTHER V/s. JAGDAMBA OIL MILLS AND ANOTHER*** reported in **(2002) 3 S.C.C. Page-496**, in case of ***KARNATAKA STATE INDUSTRIAL INVESTMENT & DEVELOPMENT CORPN. LTD., V/s. CAVALET INDIA LTD. AND OTHERS*** reported in **(2005) 4**

S.C.C. Page-456 and in case of ***ORISSA STATE FINANCIAL CORPORATION V/s. NARSINGH CH. NAYAK AND OTHERS*** reported in **(2003) 10 S.C.C. Page-261** and has requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the term loan for an amount of Rs.54 Lacs came to be sanctioned by the GSFC in the year 2000 and an amount of Rs.32.57 Lacs came to be disbursed. However, due to non-fulfillment of certain obligations and terms & conditions and for non-availability of the fund, by communication dated 9.10.2001 the respondent-corporation cancelled the undrawn amount of loan of Rs.21.43 Lacs which has been accepted by the petitioner meaning thereby, the same has not been challenged by the petitioner till date. Under the circumstances, the grievance made by the petitioner with regard to non-payment/non-disbursement of Rs.21.43 Lacs cannot be sustained. It is required to be noted that by communication dated 20.11.2001 the GSFC recalled the loan amount already disbursed and the same came to be challenged by the petitioner in the

year 2005 only. In the meantime, the petitioner has made representation to the respondent for reschedulement and/or for issuance of No Objection Certificate for the properties of the petitioner which is already mortgaged with the respondent-corporation. Considering the fact that amount of Rs.56,87,848/- was due and payable by the petitioner to the respondent-corporation as on 1.8.2005, the respondent-corporation has initiated the proceedings under Section 29 of the Act and therefore, it cannot be said that such an action is illegal and/or arbitrary. The only contention on behalf of the petitioner is that pending the decision on representation for waiver of penal interest, cumulative interest, penalty, etc. and the request for reschedulement, the respondent-corporation has initiated the proceedings under Section 29 of the Act.

7. Shri Shah, learned advocate appearing on behalf of the petitioner has requested for waiver of cumulative interest, penalty and other charges on the amount of Rs.21.43 Lacs though was sanctioned, was not disbursed and due to the same, the petitioner has suffered the consequences and therefore, in the peculiar facts and

circumstances of the case, the same should be waived. It is required to be noted that so far as the cumulative interest, penalty and other charges are concerned and for which the petitioner prays for waiver, is agreed to be paid by the petitioner as per the contract entered into between the parties and therefore, the same cannot be waived. It is required to be noted that the petitioner came to be informed by communication dated 9.10.2001 with regard to cancellation of the undrawn loan amount of Rs.21.43 Lacs and the petitioner has not challenged the same and has accepted the same and therefore, it is not open for the petitioner to make grievance with regard to the cancellation of the said undrawn loan amount. As held by the Hon'ble Supreme Court in case of ***ORISSA STATE FINANCIAL CORPORATION (Supra),*** the High Court should not enter into the area of contractual obligations between the parties and issue directions annulling an existing contract and introducing a new contract in its stead. As held by the Hon'ble Supreme Court in case of ***KARNATAKA STATE INDUSTRIAL INVESTMENT & DEVELOPMENT CONRN. LTD. (Supra),*** interference under Article 226 of the Constitution by the High Court is called for only if the action is unfair or unreasonable or is in

violation of any statutory provision. Even a wrong decision taken by the corporation is not open to challenge unless the same is mala-fide. As held by the Hon'ble Supreme Court the doctrine of fairness cannot be invoked to the extent of disabling the corporation from recovering the amount due to it while not insisting upon the borrower to honour the commitments undertaken by him. Under the circumstances, the prayers sought by the petitioner which are stated herein above cannot be granted. So far as grant of No Objection Certificate on the mortgaged properties is concerned, the respondent-corporation has submitted in the affidavit-in-reply that the corporation has not received any offer from any bank for making full payment of the entire dues of the petitioner and if such an offer is received by the corporation, the same would be considered by the corporation. Under the circumstances also the prayer of the petitioner for grant of No Objection Certificate on the mortgaged properties is not required to be granted and it will be open for the petitioner to approach the respondent-corporation with concreat proposal from other financial institutions/banks and request the respondent-corporation for reschedulement and the respondent-

corporation is directed to consider the same sympathetically and in accordance with law and on merits.

8. For the reasons stated above and with the above observations and direction, the present Special Civil Application is dismissed. Office is directed to issue cheque in the name of respondent-corporation for the amount which is deposited by the petitioner pursuant to the order passed by this Court dated 16.9.2005 in the present Special Civil Application forthwith.

(M.R.SHAH, J.)

kdc.